SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 94

THE UNITED STATES, PETITIONER

vs.

N. Y. RAYON IMPORTING CO., INC. (#2) AND ALFRED L. ROSE, NORMAN S. GOETZ, ET AL.

No. 96

N. Y. RAYON IMPORTING CO., INC. (#2) AND ALFRED L. ROSE, NORMAN S. GOETZ, ET AL., PETITIONERS

vs.

THE UNITED STATES.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF CLAIMS

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1 In the Court of Claims of the United States

No. 45861

N. Y. RAYON IMPORTING CO., INC. (#2), AND ALFRED L. ROSE, NORMAN S. GOETZ, WALTER MENDELSOHN AND BERNARD D. LANG, AS LIQUIDATING DIRECTORS AND TRUSTEES OF N. Y. RAYON IMPORTING CO., INC. (#2), PLAINTIFFS, AND SOCIETE POUR NOUVEAUX PLACEMENTS DE CAPITAUX, IMPLEADED PLAINTIFF, *v.* THE UNITED STATES, DEFENDANT

History of proceedings

The original petition was filed on April 29, 1943.

On defendant's motion and pursuant to an order of the Court dated December 8, 1943, Societe Pour Nouveaux Placements De Capitaux was added as a party plaintiff in this suit by the filing of an amended petition on January 21, 1944, which is as follows:

Amended petition

Filed January 21, 1944

To the Honorable Court of Claims of the United States and the Honorable Judges Thereof:

The plaintiffs, N. Y. Rayon Importing Co., Inc. (#2), and Alfred L. Rose, Norman S. Goetz, Walter Mendelsohn and Bernard D. Lang as liquidating directors and trustees of N. Y. Rayon Importing Co., Inc. (#2), by their attorneys, Proskauer Rose, Goetz & Mendelsohn respectfully show, on information and belief:

I. Plaintiff, N. Y. Rayon Importing Co., Inc. (herein
2 called "Rayon #2"), is a corporation duly incorporated under the Laws of the State of New York on March 1, 1930, with its principal office at New York City, New York.

II. Rayon #2 was duly dissolved on January 9, 1931, by the filing of a Certificate of Dissolution with the Secretary of State of the State of New York in compliance with Section 105 of the New York Stock Corporation Law, but pursuant to the provisions of Section 105, subdivision 8, of the said New York Stock Corporation Law, Rayon #2 continues to exist for the purpose of collecting and distributing its assets, doing all other acts required to adjust and wind up its business and affairs and suing in its corporate name.

III. At the time of the dissolution of Rayon #2 its directors were the plaintiff, Alfred L. Rose, one Max Spinnler and one Hartley Robbins, and there was one vacancy in the membership of the Board of Directors by reason of the death of Heinrich Keller, also known at Heinrich Keller-Gull.

IV. Said Heinrich Keller, also known as Heinrich Keller-Gull, died on or about December 9, 1930, said Max Spinnler died on or about April 1, 1935, and said Hartley Robbins died on or about May 25, 1938.

V. From on or about May 25, 1938, the plaintiff, Alfred L. Rose, was the sole surviving director of the directors in office at the time of the aforesaid dissolution of Rayon #2 and as such is hereafter referred to as the "sole surviving liquidating director and trustee" of Rayon #2.

VI. At a meeting of the Board of Directors of Rayon #2
3 held on June 10, 1938, the said Alfred L. Rose, as sole surviving liquidating director and trustee of Rayon #2 elected the plaintiff, Norman S. Goetz, as a director of Rayon #2 to fill the vacancy caused by the death of said Max Spinnler; said Norman S. Goetz thereupon entered the meeting and took his place as a director and together with the plaintiff, Alfred L. Rose, elected the plaintiff, Walter Mendelsohn, as a director of Rayon #2 to fill the vacancy caused by the death of said Heinrich Keller, also known as Heinrich Keller-Gull; said Walter Mendelsohn thereupon entered the meeting and took his place as a director and, together with the plaintiffs, Alfred L. Rose and Norman S. Goetz, elected the plaintiff, Bernard D. Lang as a director of Rayon #2 to fill the vacancy caused by the death of said Hartley Robbins.

VII. At all times since June 10, 1938, the plaintiff, Alfred L. Rose, as the sole surviving liquidating director and trustee of Rayon #2 and the plaintiffs, Norman S. Goetz, Walter Mendelsohn and Bernard D. Lang, were and still are the duly authorized liquidating directors and trustees of Rayon #2, and the plaintiff Alfred L. Rose, sues in his representative capacity as the sole surviving liquidating director and trustee of Rayon #2, and with him the other directors of Rayon #2, the plaintiffs, Norman S. Goetz, Walter Mendelsohn and Bernard D. Lang sue in their representative capacities as coliquidating directors and trustees of Rayon #2.

VIII. N. Y. Rayon Importing Co., Inc. (hereinafter called Rayon #1) is a corporation duly incorporated under the Laws of the State of New York on April 26, 1923, and was duly dissolved
4 on March 1, 1930, by the filing of a Certificate of Dissolution with the Secretary of State of the State of New York in compliance with Section 105 of the New York Stock Corporation Law.

IX. Nyrayco Importing & Converting Corporation (hereinafter called "Nyrayco") is a corporation duly incorporated under the Laws of the State of New York on January 30, 1928, and was dissolved by proclamation *or* or about December 16, 1935, for non-pay-

ment of franchise taxes pursuant to Section 203(a) of the New York Tax Law.

X. From the dates of their incorporation and up to and including March 1, 1930, Rayon #1 and Nyrayco were engaged in the business of importing and/or selling and/or distributing rayon. During the years 1925, 1926, and 1927, Rayon #1, and during the years 1928 and 1929 Rayon #1 and Nyrayco paid large sums of money for customs duties which had been assessed and collected on shipments of rayon yarn imported by them, against which assessments, claimed by said Rayon #1 and Nyrayco to be erroneous and illegal, protests were duly filed by and on behalf of said corporations under Section 514 of the Tariff Act of 1922.

XI. On or about March 1, 1930, an agreement was entered into between the owners of all of the issued and outstanding stock of Rayon #1, Nyrayco and of two other corporations known as Rayseta Yarns Corp. (hereinafter called "Rayseta"), a New York corporation, and Rayonese Yarns Corp. (hereinafter called "Rayonese"), a New Jersey corporation, to effect a reorganization of said corporations by which all of the assets, liabilities and business of the said four corporations would be transferred to and united into one corporation and the business conducted as a single corporate entity.

XII. The plaintiff, Rayon #2, was incorporated on March 1, 1930, in order to acquire all of the assets, and to assume all the liabilities, of Rayon #1, Nyrayco, Rayseta and Rayonese, pursuant to the aforesaid plan of reorganization. Thereafter, between the months of March and June, 1930, inclusive, the plaintiff Rayon #2 acquired all of the issued and outstanding shares of stock of Rayon #1, Nyrayco, Rayseta and Rayonese and acquired the business and all of the assets of said four predecessor corporations, including the ownership of the aforesaid claims for refunds of excessive customs duties theretofore filed by Rayon #1 and Nyrayco, in consideration of the assumption by the plaintiff Rayon #2 of all of the liabilities of said four predecessor corporations and the issuance by it of all of the shares of its capital stock then to be outstanding.

XIII. At the conclusion of said reorganization, the owners of the stock of Rayon #1, Nyrayco, Rayseta and Rayonese continued to be the owners of the stock of plaintiff, Rayon #2, in amounts equal to their holdings of stock in said predecessor corporations.

XIV. Thereafter, the protests filed by Rayon #1 and Nyrayco, as aforesaid, came on for hearing and decision by the United States Customs Court in 1937, at a time when, in accordance with the laws of the State of New York and the decisions of the courts of State of New York, then in force and effect, Rayon #1, although dis-

solved under Section 105 of the New York Stock Corporation Law, continued to exist pursuant to said Section 105, and at a time when Nyrayco, although dissolved under Section 203 (a) of the New York Tax Law, continued to exist pursuant to Section 29
6 of the New York General Corporation Law, for the purpose of suing in their respective corporate names. On or about April 30, 1937, and May 6, 1937, respectively, said United States Customs Court rendered two judgments on said protests, sustaining the claims of said Rayon #1 and Nyrayco and directing a reliquidation accordingly of the customs entries covering the said shipments of rayon yarns. As the result of said judgments and the reliquidation of the customs entries made pursuant thereto by the Collector of Customs at the Port of New York, said Rayon #1 became entitled to refunds in the sum of $362,482.71, and said Nyrayco became entitled to refunds in the sum of $30,809.75.

XV. By reason of the foregoing, and the aforesaid transfer of all of the assets of Rayon #1 and Nyrayco to plaintiff, Rayon #2, at the time of the entry of said judgments and the reliquidation of the customs entries made pursuant thereto, Rayon #1 and Nyrayco became entitled to refunds respectively in the said sums of $362,482.71 and $30,809.75 each for the use of plaintiff, Rayon #2.

XVI. Said refunds were duly certified by the Collector of Customs at New York to the proper disbursing officer for payment, and checks covering said refunds were drawn by an authorized disbursing officer on the Treasurer of the United States, payable to the order of Rayon #1 and Nyrayco, and duly delivered to said Collector of Customs. Annexed hereto, marked Exhibit A, is a schedule of said checks, issued in the name of Rayon #1, in the aggregate sum of $362,482.71, said checks having been drawn on various dates from, and including August 4, 1937, to, and including Febru-
ary 3, 1938; and annexed hereto, marked Exhibit B, is
7 a schedule of said checks, issued in the name of Nyrayco, in the aggregate sum of $30,809.75, said checks having been drawn on various dates from and including August 30, 1937 to and including January 26, 1938. Appropriations for the refund or payment of customs collections or receipts for the fiscal year ending June 30, 1938, were duly made by Congress by the Act of May 14, 1937 (50 U. S. Stat. 137, at 142) and the Act of June 25, 1938 (52 U. S. Stat. 1114, at 1149). Said checks were forwarded by the customs officials or other Federal officials at New York, N. Y., to the General Accounting Office at Washington, D. C., for lawful disposition, in view of the fact that, at the time of drawing said checks, Rayon #1, Nyrayco and Rayon #2 were dissolved corporations.

XVII. Thereafter, the General Accounting Office withheld approval of the delivery of said checks or the proceeds thereof to the plaintiff, Rayon #2, because of alleged doubts it claimed to have as to the propriety of the delivery of such checks or the proceeds thereof, and invited submission of further information relative thereto, which information was duly furnished. After more than a year had elapsed from the date of their issue, the aforesaid checks or the proceeds thereof were reported by said General Accounting Office to be deposited in the Treasury to the credit of the trust fund account entitled "Outstanding Liabilities, 1938" pursuant to the provisions of Title 31 of the United States Code, Section 725t; the balances of which trust fund account are available to pay claims on account of said checks. Claims for said checks were made before the expiration of two fiscal years after the deposit thereof.

8 XVIII. The United States is now wrongfully and unlawfully withholding from the plaintiff, Rayon #2, and from the plaintiff, Alfred L. Rose, as the sole surviving liquidating director and trustee of Rayon #2 and from the other directors of Rayon #2, the plaintiffs Norman S. Goetz, Walter Mendelsohn and Bernard D. Lang, as co-liquidating directors and trustees of Rayon #2, without their consent and against their will, although duly demanded by them, the above amount of $393,292.46 with interest thereon, and has wrongfully and unlawfully refused to pay the same, and claim is made for the said amount of $393,292.46 with interest thereon.

XIX. No other action has been had on said claims in Congress or by any of the departments, except as aforesaid. The plaintiff, Rayon #2, and the individual plaintiffs are the owners of the claims herein referred to and have not assigned or transferred the whole or any part thereof or interest therein to any other person, firm or corporation. The plaintiff, Rayon #2, the individual plaintiffs and Rayon #1 and Nyrayco, the predecessors of Rayon #2, are citizens of the United States and have at all times borne true allegiance to the Government of the United States and have not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government. The plaintiff, Rayon #2, and the individual plaintiffs believe the facts stated herein to be true and that they are justly entitled to the amount claimed from the United States after allowing all just credits and offsets.

9 DISCLAIMER AND CONSENT OF IMPLEADED PLAINTIFF, SOCIETE POUR NOUVEAUX PLACEMENTS DE CAPITAUX

The impleaded plaintiff, Societe Pour Nouveaux Placements de Capitaux, by its attorneys, Proskauer Rose Goetz & Mendelsohn, respectfully shows, on information and belief:

XX. Societe Pour Nouveaux Placements de Capitaux (herein called "Societe") is a corporation organized and existing under the laws of the Republic of Switzerland, which is a Government that accords to the citizens of the United States the right to prosecute claims against the Republic of Switzerland in its courts.

XXI. The action heretofore instituted by the plaintiffs in Docket No. 45862 was consolidated with the action heretofore instituted by the plaintiffs in Docket No. 45861 by order of this Court dated June 9, 1943, and the action heretofore instituted by the plaintiff in Docket No. 45863 was similarly consolidated with the action instituted by the plaintiffs in Docket No. 45861 by order of this Court dated June 9, 1943. This amended petition is filed pursuant to order of this Court dated December 8, 1943, requiring Societe to be added as a party plaintiff to each of the above referred to causes.

XXII. Up to March, 1930, Societe was the owner of 850 shares of the outstanding stock of Nyrayco Importing & Converting Corporation (herein called "Nyrayco"), the corporate plaintiff in Docket No. 45863. Thereafter, between March and June, 1930 inclusive, N. Y. Rayon Importing Co., Inc. (herein called "Rayon #2"), the corporate plaintiff in Docket No. 45861, became and still is the owner of all the shares of outstanding stock of Nyrayco and of N. Y. Rayon Importing Co., Inc. (herein called "Rayon #1"), the corporate plaintiff in Docket No. 45862 and Societe became and still is the owner of all the shares of outstanding stock of Rayon #2.

XXIII. By virtue of its stock ownership as aforesaid, Societe will be the ultimate beneficiary of the proceeds of the customs refunds determined to be due by judgments of the United States Customs Court dated April 30, 1937 and May 6, 1937, to the same extent, whether the said proceeds are received either by the plaintiffs in Docket No. 45861 on the one hand or by the plaintiffs in Docket Nos. 45862 and 45863 on the other hand.

XXIV. Societe disclaims having any demand or claim in its own name against the United States in the subject-matters and controversies involved in each and all of the actions, Docket Nos. 45861, 45862 and 45863 and consents to be bound and concluded by the judgments to be entered in said actions.

WHEREFORE, the plaintiff, Rayon #2, and the individual plaintiffs pray that the plaintiff, Rayon #2, and the plaintiff, Alfred L. Rose, as the sole surviving liquidating director and trustee of Rayon #2, and the plaintiffs, Norman S. Goetz, Walter Mendelsohn and Bernard D. Lang, as the co-liquidating directors and trustees of Rayon #2 have judgment against the United States

of America in the sum of $393,292.46, with interest as provided by law, and their costs herein; and

11 Wherefore, Societe Pour Nouveaux Placements de Capitaux prays that the rights of the parties be determined and consents to be bound and concluded by the judgment to be entered in this action, Docket No. 46861.

PROSKAUER, ROSE, GOETZ & MENDELSOHN,
By WILBUR H. FRIEDMAN,
A Member of the Firm,
Attorneys for Plaintiffs, N. Y. Rayon Importing Co., Inc. (#2) and Alfred L. Rose, Norman S. Goetz, Walter Mendelsohn, Bernard D. Lang as liquidating directors and trustees of N. Y. Rayon Importing Co., Inc. (#2)

PROSKAUER, ROSE, GOETZ & MENDELSOHN,
By WILBUR H. FRIEDMAN,
A Member of the Firm,
Attorneys for Impleaded Plaintiff, Societe Pour Nouveaux Placements de Capitaux, Office & Post Office Address, 11 Broadway, New York, N. Y.

12 *Exhibit A to amended petition*

Checks for refunds of excessive customs duties drawn on the Treasurer of the United States by G. F. Allen, Chief Disbursing Officer in favor of N. Y. Rayon Importing Co., Inc. (Rayon #1).

Check No.	Date of check	Voucher No.	Amount	Symbol No.
78050	8- 4-37	Vo 2-12108	$7,388.90	13-767
79546	8-25-37	Vo 2-20730	226.50	"
79882	8-30-37	Vo 2-22038	9,340.20	"
79885	8-30-37	Vo 2-22039	9,060.81	"
80197	9- 3-37	Vo 2-24662	3,481.50	"
80222	9- 3-37	Vo 2-24664	2,994.25	"
80526	9- 4-37	Vo 2-24788	1,212.10	"
80554	9- 4-37	Vo 2-24790	848.80	"
80555	9- 4-37	Vo 2-24790	317.02	"
80602	9- 4-37	Vo 2-24793	2,004.55	"
80603	9- 4-37	Vo 2-24793	1,851.45	"
80608	9- 4-37	Vo 2-24794	997.68	"
81336	9-14-37	Vo 2-27952	9,974.60	"
81142	9-14-37	Vo 2-27954	1,739.20	"
81362	9-16-37	Vo 2-28960	8,622.05	"
81414	9-16-37	Vo 2-28965	374.35	"
81418	9-16-37	Vo 2-28965	594.80	"
81419	9-16-37	Vo 2-28965	14,631.40	"
81843	9-21-37	Vo 2-30414	5,945.15	"
82769	9-30-37	Vo 2-35060	6,722.26	"
82798	9-30-37	Vo 2-35062	10,870.00	"
82924	9-30-37	Vo 2-35065	4,149.30	"
82976	9-30-37	Vo 2-35067	4,754.10	"
83039	9-30-37	Vo 2-35071	8,067.40	"
83043	9-30-37	Vo 2-35072	16,432.05	"
83133	9-30-37	Vo 2-35071	1,868.10	"
84091	10-21-37	Vo 2-44079	8,227.70	"
84026	10-21-37	Vo 2-44080	8,542.95	"
84168	10-21-37	Vo 2-44091	16,989.35	"
84235	10-21-37	Vo 2-44096	12,688.40	"

Check No.	Date of Check	Voucher No.	Amount	Symbol No.
13 84703	10-21-37	Vo 2-44175	$11, 804. 00	12-767
85277	10-22-37	Vo 2-44963	7, 504. 80	"
85279	10-22-37	Vo 2-44964	4, 273. 52	"
85974	10-29-37	Vo 2-47673	498. 85	"
85804	10-29-37	Vo 2-47666	13, 912. 90	"
86601	11- 4-37	Vo 2-50407	20, 980. 20	"
86738	11-10-37	Vo 2-52751	22, 445. 65	"
86740	11-10-37	Vo 2-52752	28, 677. 60	"
86783	11-10-37	Vo 2-52755	920. 80	"
86886	11-10-37	Vo 2-52764	693. 05	"
87410	11-10-37	Vo 2-52802	5, 561. 40	"
87444	11-10-37	Vo 2-52804	3, 061. 30	"
89011	11-23-37	Vo 2-59218	1, 135. 75	"
89930	12- 1-37	Vo 2-62417	3, 334. 00	"
90834	12- 9-37	Vo 2-65395	4, 878. 65	"
91597	12-20-37	Vo 2-69958	10, 267. 95	"
91598	12-20-37	Vo 2-69958	1, 862. 90	"
92952	12-29-37	Vo 2-72486	8, 701. 35	"
93908	1- 7-38	Vo 2-76094	1, 138. 30	"
96206	1-25-38	Vo 2-83200	19, 485. 60	"
95163	1-18-38	Vo 2-80079	2, 933. 75	"
96313	1-26-38	Vo 2-83749	6, 639. 95	"
92267	2- 3-38	Vo 2-86986	2, 033. 45	"
			362, 482. 71	

14 *Exhibit B to amended petition*

Checks for refunds of excessive customs duties drawn on the Treasurer of the United States, by G. F. Allen, Chief Disbursing Officer, in favor of Nyrayco Importing and Converting Corporation (Nyrayco).

Check No.	Date of Check	Voucher No.	Amount	Symbol No.
79888	8-30-37	Vo 2-22039	$121. 25	12-767
81419	9-16-37	Vo 2-28964	816. 15	"
81871	9-21-37	Vo 2-30416	12, 698. 95	"
83045	9-30-37	Vo 2-35072	385. 45	"
83046	9-30-37	Vo 2-35072	304. 15	"
83090	9-30-37	Vo 2-35075	4, 988. 25	"
84238	10-21-37	Vo 2-44096	5, 183. 95	"
84707	10-21-37	Vo 2-44176	650. 35	"
86787	11-10-37	Vo 2-52755	1, 896. 20	"
87409	11-10-37	Vo 2-52802	892. 65	"
96306	1-26-38	Vo 2-83748	2, 824. 40	"
			30, 909. 75	

15 [*Duly sworn to by Wilbur H. Friedman; jurat omitted in printing.*]

17 *General traverse*

Filed March 1, 1944

And now comes the Attorney General, on behalf of the United States, and answering the amended petition of the claimant

herein, denies each and every allegation therein contained; and asks judgment that the amended petition be dismissed.

FRANCIS M. SHEA,
Assistant Attorney General.

DBM.
EEE.

Argument and submission of case

On December 3, 1945, the case was argued and submitted on merits by Mr. Eugene Eisenmann for plaintiff, and by Mr. D. B. MacGuineas for defendant.

19 *Special findings of fact, conclusion of law and opinion of the court by Jones, J.*

Filed February 4, 1946.

Mr. Eugene Eisenmann for the plaintiffs and impleaded plaintiff. Proskauer, Rose, Goetz & Mendelsohn and Mr. Albert L. Solodar were on the briefs.

Mr. Donald B. MacGuineas, with whom was Mr. Assistant Attorney General John F. Sonnett for the defendant.

20 This case having been heard by the Court of Claims, the court, upon the evidence and the report of a commissioner, makes the following

Special findings of fact

1. N. Y. Rayon Importing Co., Inc. (hereinafter called "Rayon #1"), one of the plaintiffs in Docket No. 45862, is a dissolved New York corporation which was duly incorporated on April 26, 1923, with its principal office in New York City, under the name of N. Y. Artificial Silk Importing Co., Inc. By certificate duly filed on May 4, 1925, it changed its name to N. Y. Rayon Importing Co., Inc. Pursuant to its certificate of incorporation, as duly amended July 7, 1927, it issued 500 shares of its capital stock of the par value of $100 each.

2. Nyrayco Importing & Converting Corporation (hereinafter called "Nyrayco"), the plaintiff in Docket No. 45863, is a dissolved New York corporation which was duly incorporated on January 30, 1928, with its principal office in New York City. Pursuant to its certificate of incorporation, it issued 1,000 shares of its capital stock of the par value of $100 each.

3. N. Y. Rayon Importing Co., Inc. (hereinafter called "Rayon #2"), one of the plaintiffs in Docket No. 45861, is a dissolved New

York corporation. It was duly incorporated under the laws of the State of New York on March 1, 1930, with its principal office in New York City, in order to acquire all the assets and to assume all the liabilities of four other corporations, Rayon #1, Nyrayco, Rayseta Yarns Corp., and Rayonese Yarns Corp., pursuant to a plan of reorganization.

4. From the respective dates of their incorporation and up to and including March 1, 1930, Rayon #1 and Nyrayco were engaged in the business of importing and selling rayon yarn. As the rayon was imported, entries were made in their behalf in the Customs House and the entries were liquidated by the Collector of Customs. During the years 1925, 1926, and 1927, Rayon #1, and during the years 1928 and 1929, Rayon #1 and Nyrayco paid large sums of money for customs duties which had been assessed on
21 shipments of rayon yarn imported by them, against which assessments, claimed by Rayon #1 and Nyrayco to be erroneous and illegal, protests were duly filed prior to March 1, 1930, with the Collector of Customs by and on behalf of those corporations under Section 514 of the Tariff Act of 1922, thereby instituting actions in the United States Customs Court. All of the protests were filed either by Rayon #1 or Nyrayco or on behalf of Rayon #1 by Richard Shipping Corporation, its customs house broker.

5. On or about March 1, 1930, an agreement was entered into between the owners of all of the issued and outstanding stock of Rayon #1, Nyrayco and of two other corporations known as Rayseta Yarns Corp. (hereinafter called "Rayseta"), and Rayonese Yarns Corp. (hereinafter called "Rayonese"), to effect a reorganization of those corporations by which all of the assets, liabilities, and business of the four corporations would be transferred to and united into one corporation and the business conducted as a single corporate entity. Rayon #2 was incorporated for this purpose on March 1, 1930, as shown in finding 3. Pursuant to resolutions adopted at a meeting of the Board of Directors of Rayon #2 held on or about March 1, 1930, Rayon #2 offered to acquire from Rayon #1, Nyrayco, Rayseta, and Rayonese all of the assets of those corporations and to assume all of the liabilities of those corporations in consideration of the issuance by Rayon #2 to those corporations, or their nominees, of all of the shares of its capital stock then outstanding. Meetings of the Boards of Directors of Rayon #1, Nyrayco, Rayseta, and Rayonese were held on or about March 1, 1930, and resolutions were unanimously adopted accepting the offer and transferring to Rayon #2 all of the assets of those corporations.

6. The pertinent portion of the resolution adopted by the Board of Directors of Rayon #1 on March 1, 1930, as reflected

in the minutes of a special meeting thereof, which were signed on that date, reads as follows:

"Whereas an offer has been made to this corporation by N. Y. Rayon Importing Co. Inc. (organized March 1, 1930), providing for the assignment by this corporation of all of its assets including its name and good-will, all as of March 1, 1930, in exchange for the issuance of 500 shares of the capital stock of the said corporation to be issued to this corporation or its nominees, and in further consideration of the assumption of all the liabilities of this Company; * * *

"Now, therefore, be it

"Resolved that the said offer be and the same is in all respects accepted and that each and every officer of this Company be and the same is hereby authorized and directed to take any and all action and to execute any and all documents necessary or desirable in order to carry out the terms and provisions of this agreement by this Company to be performed."

The pertinent portion of the resolution adopted by the Board of Directors of Nyrayco on March 1, 1930, as reflected in the minutes of a special meeting thereof, which were signed on that date, reads as follows:

"Whereas, an offer has been made to this Corporation by N. Y. Rayon Importing Co. Inc. (organized March 1, 1930) providing for the assignment by this Corporation of all its assets as of March 1, 1930, in exchange for the issuance of 1,000 shares of the capital stock to this Corporation or its nominees and in further consideration of the assumption of all the liabilities of this Company; * * *

"Now, therefore, be it

"Resolved that the said Offer be, and the same is in all respects accepted and that each and every officer of this Company be, and the same is hereby authorized and directed to take any and all action and to execute any and all documents necessary or desirable in order to carry out the terms and provisions of this agreement by this Company to be performed."

Similar resolutions were adopted by the Boards of Directors of Rayseta and Rayonese at special meetings thereof for the transfer of all the assets of those corporations to Rayon #2 in consideration of the issuance of 150 shares of its capital stock to Rayseta or its nominees, and in consideration of the issuance of 150 shares of its capital stock to Rayonese or its nominees.

The offers made by Rayon #2, referred to in the above resolutions of the Board of Directors of Rayon #1 and Nyrayco, read as follows:

23 MARCH 1ST, 1930.

N. Y. RAYON IMPORTING CO., INC.,
New York, N. Y.

DEAR SIRS: In consideration of the transfer of all the assets of this Company to the undersigned corporation including the name and good-will of the Company as of March 1st, 1930, we agree to issue to you or your nominees 500 shares of the capital stock of this Company and further agree to assume all of the liabilities of your Company.

Very truly yours,
N. Y. RAYON IMPORTING CO., INC. (1930).

MARCH 1, 1930.

NYRAYCO IMPORTING & CONVERTING CORPORATION,
New York, N. Y.

DEAR SIRS: In consideration of the transfer of all the assets of this Company to the undersigned corporation, as of March 1, 1930, we agree to issue to you or your nominees, 1,000 shares of the capital stock of this Company, and further agree to assume all of the liabilities of your Company.

Very truly yours,
N. Y. RAYON IMPORTING CO., INC. (1930).

Similar offers were made by Rayon #2 addressed to Rayseta and Rayonese.

The pertinent portions of the minutes of the special meeting of the Board of Directors of Rayon #2 held on or about March 1, 1930, which were signed at the time of that meeting, read as follows:

"The Secretary announced that the company was in receipt of an offer from the old N. Y. RAYON IMPORTING CO., INC., offering to sell to this Company all of its assets including therein its name and good-will, as of March 1, 1930, which said offer together with the schedule of the assets and liabilities was ordered to be filed with the minutes of this meeting, in consideration of the assumption by this company of all its liabilities and the issuance to the said company or its nominees of 500 shares of the capital stock of this company. After due consideration and upon motion duly made and seconded, the following preamble and resolutions were unanimously adopted:

"'Whereas in the opinion of this Board of Directors, the said offer is for the best interests of this company.

24 "'Now, therefore, be it

"'Resolved that the said offer be and the same is hereby accepted and that this company purchase all of the assets and

assume all of the liabilities of the said company as more particularly set forth in the offer annexed to the minutes of this meeting, in consideration of the issuance by this company of 500 shares of its capital stock, and be it

"'Further resolved, that each and every officer of this company be and the same is hereby authorized and directed to take any and all action and to execute any and all documents necessary or advisable in order to carry out the terms and provisions of the said agreement on the part of this company to be performed.'

"The Secretary announced that the company was in receipt of an offer from the Nyrayco Importing & Converting Corporation, offering to sell to this company all of its assets as of March 1, 1930, which said offer together with the schedule of the assets and liabilities was ordered to be filed with the minutes of this meeting, in consideration of the assumption by this company of all its liabilities and the issuance to the said company or its nominees of 1,000 shares of the capital stock of this company. After due consideration and upon motion duly made and seconded, the following preamble and resolutions were unanimously adopted:

"'Whereas in the opinion of this Board of Directors, the said offer is for the best interests of this company,

"'Now, therefore, be it

"'Resolved, that the said offer be and the same is hereby accepted and that this company purchase all of the assets and assume all of the liabilities of the said company as more particularly set forth in the offer annexed to the minutes of this meeting, in consideration of the issuance by this company of 1,000 shares of its capital stock, and be it

"'Further resolved that each and every officer of this company be and the same is hereby authorized and directed to take any and all action and to execute any and all documents necessary or advisable in order to carry out the terms and provisions of the said agreement on the part of this company to be performed.'"

Similar resolutions were adopted concerning the transfer of the assets of Rayseta and Rayonese.

The offers made by Rayon #1 and Nyrayco, referred to in the above resolutions of the Board of Directors of Rayon #2, read as follows:

25 MARCH 4, 1930.

N. Y. RAYON IMPORTING CO. INC.,

New York City.

GENTLEMEN: We hereby offer to sell to you all of our assets, including therein the name and good-will of our company, as of March 1, 1930, in consideration of the assumption by you of all

the liabilities of this company and the issuance to this company or its nominees of 500 shares of the capital stock of your company full paid and nonassessable. A schedule of the assets and liabilities of this company is attached hereto and made part of this offer.

Yours very truly,

N. Y. RAYON IMPORTING CO., INC.

MARCH 4, 1930.

N. Y. RAYON IMPORTING CO. INC.,
New York City.

GENTLEMEN: We hereby offer to sell to you all of the assets of our company, as of March 1, 1930, in consideration of the assumption by you of all the liabilities of this company and the issuance of this company or its nominees of 1,000 shares of the capital stock of your company full paid and nonassessable. A schedule of the assets and liabilities of this company is attached hereto and made part of this offer.

Yours very truly,

NYRAYCO IMPORTING & CONVERTING CORPORATION.

Although these two offers refer to a schedule of assets and liabilities, no schedules of assets and liabilities were ever submitted with or attached to the offers.

Attached to the minutes of the special meetings of the Boards of Directors of Rayon #1 and Nyrayco, held on March 1, 1930, were written consents of the stockholders of record of Rayon #1 and Nyrayco to the transfer of all the assets of these corporations to Rayon #2. These consents were not signed at the time of the reorganization, but were signed some years later.

7. Between the months of March and June 1930, inclusive, all of the issued and outstanding shares of stock of Rayon #1, Nyrayco, Rayseta, and Rayonese (a total of 1,800 shares of the par value of $100 each) were delivered to Rayon #2, and Rayon
26 #2 took over the business and all of the assets of the four predecessor corporations, in consideration of the assumption by Rayon #2 of all of the liabilities of the four predecessor corporations and the issuance by it to the nominees of the four predecessor corporations of 1,800 shares of its capital stock of the par value of $100 each, being all of the shares of its capital stock then outstanding. At the time of the transfer of all of the assets of Rayon #1 and Nyrayco as set out above, one of the assets of each of those corporations was their refund claims then pending undetermined, for refund of excessive custom duties paid.

8. As part of the reorganization, Rayon #1 was dissolved and in connection therewith Max Spinnler, president and a director of Rayon #1, verified an Application dated February 27, 1930,

for Consent to Dissolution of Rayon #1, which was submitted to the New York State Department of Taxation and Finance. This application stated that March 1, 1930, was the date of discontinuance of business, that all of the assets of the corporation had been disposed of, and that N. Y. Rayon Importing Co., Inc. (newly organized) acquired the assets of Rayon #1 and would continue the business formerly conducted by Rayon #1.

9. On October 30, 1930, Max Spinnler who was the president and a director of Rayon #1, Nyrayco, Rayseta, Rayonese, and Rayon #2, wrote a memorandum reading as follows:

"The old companies, N. Y. Rayon Importing Co., Nyrayco Imp. & Converting Co., are united Assets and Liabilities together with Rayonese Yarns Corp., Rayseta Yarns Corp. into a new company, N. Y. Rayon Imp. Co., with a capital of $180,000:

NYRIC	$50,000
Nyrayco	100,000
Rayonese	15,000
Rayseta	15,000
	180,000"

"Nyric" was an abbreviation of N. Y. Rayon Importing Co., Inc.

10. Prior to the above reorganization, a French corporation known as Comptoir des Textiles Artificiel was the equitable owner of all the 1,800 outstanding shares of stock of Rayon #1, Nyrayco, Rayseta, and Rayonese. As part of the reorganization,
27 all of those shares of stock were transferred and delivered to Rayon #2, and Rayon #2 became the legal owner and holder of all the shares of stock of the four predecessor corporations. Rayon #2, in turn, issued 1,800 shares of its capital stock (the only shares ever issued by it) all of which were delivered to the legal owner thereof, the impleaded plaintiff, Societe Pour Nouveaux Placements de Capitaux (hereinafter called "Societe"), a Swiss corporation, the beneficial interest in which corporation is held by Comptoir des Textiles Artificiel.

11. Rayon #1 was duly dissolved on March 1, 1930, by the filing of a voluntary Certificate of Dissolution on that date with the Secretary of State of the State of New York in compliance with Section 105 of the New York Stock Corporation Law, and on March 1, 1930, a Certificate of Dissolution was issued by the Secretary of State of the State of New York.

12. Rayon #2 was duly dissolved on January 9, 1931, by the filing of a voluntary Certificate of Dissolution on that date with the Secretary of State of the State of New York in compliance with Section 105 of the New York Stock Corporation Law, and on

January 9, 1931, a Certificate of Dissolution was issued by the Secretary of State of the State of New York.

13. Nyrayco was dissolved on December 16, 1935, under Section 203-a of the New York Tax Law, by proclamation for nonpayment of franchise taxes.

14. The protests filed by and on behalf of Rayon #1 and Nyrayco, as shown in finding 4, prior to the reorganization in March 1930, came on for hearing and decision by the United States Customs Court. On April 30, 1937, and May 6, 1937, respectively, the United States Customs Court rendered two decisions and judgments in favor of Rayon #1 and Nyrayco on the protests, sustaining the claims filed by and on behalf of Rayon #1 and Nyrayco and directing a reliquidation accordingly of the customs entries covering the shipments of rayon yarns.

15. The fact of the dissolution of Nyrayco on December 16, 1935, for nonpayment of its franchise taxes was never in any way brought to the attention of the United States Customs Court in connection with the proceedings then pending therein by Nyrayco.

28 16. Upon the entry of the above judgments by the United States Customs Court, the Collector of Customs of the Port of New York reliquidated the entries listed in the schedules appended to those decisions and judgments, computing with respect to each entry the amount of assessed duties which should be refunded thereon under those decisions and judgments. The refunds were duly certified by the Collector of Customs to the proper disbursing officer for payment; and as a result of the reliquidation, the total amount of the refunds payable under the judgments upon importation of merchandise by Rayon #1 and Nyrayco was $362,482.71 and $30,809.75, respectively. The checks itemized in the exhibits made part of the petitions in this court in these three actions (which exhibits are made a part hereof by reference), covering the refunds and aggregating the total of $393,292.46, were drawn by G. F. Allen, Chief Disbursing Officer of the United States, on the Treasurer of the United States, on various dates from August 4, 1937, to February 3, 1938, payable respectively to Rayon #1, Nyrayco, and Richard Shipping Corporation, the latter being the customs house broker of Rayon #1.

The aggregate of the checks made payable to Rayon #1 was $359,548.96; that made payable to Nyrayco was $30,809.75, and the one check made payable to Richard Shipping Corporation was in the amount of $2,933.75. Richard Shipping Corporation filed a formal acknowledgment on the trial of these actions stating that the protest, as a result of which the check for $2,933.75 was drawn, was filed by it as customs house broker acting on behalf of Rayon #1 and that Richard Shipping Corporation had no interest in

the check or the proceeds thereof, but that the check and its proceeds belonged either to Rayon #1 or its successor in interest.

17. Appropriations for the refund or payment of customs collections or receipts for the fiscal year ending June 30, 1938, were duly made by Congress by the Act of May 14, 1937 (50 Stat. 137, 142), and the Act of June 25, 1938 (52 Stat. 1114, 1149).

18. Because of the fact that the checks were payable to Rayon #1 and Nyrayco which were dissolved corporations and the check in the amount of $2,933.75 payable to the order of Richard
29 Shipping Corporation belonged to Rayon #1, or its successor in interest, the Collector of Customs caused the checks to be transmitted to the General Accounting Office in Washington, D. C., for lawful disposition.

19. A petition was filed by Rayon #2 with the General Accounting Office requesting the transfer to it of the checks, but the General Accounting Office refused to deliver the checks to Rayon #2, Rayon #1, or Nyrayco. The proceeds of the checks were deposited in the Treasury in a trust fund entitled "outstanding Liabilities 1938," pursuant to Section 725 (t), Title 31, of the United States Code, and are credited and still remain credited in that account to the following parties in the amounts hereinafter set forth:

N. Y. Rayon Importing Co., Inc. (which is Rayon #1)	$359,548.96
Richard Shipping Corporation	2,933.75
Nyrayco Importing & Converting Corporation (which is Nyrayco)	30,809.75

20. In June 1940, an action was instituted in the Supreme Court of the State of New York for a declaratory judgment to adjudicate, among other things, the ownership of the customs refund claims as between Rayon #1 and Nyrayco on the one hand, and Rayon #2 on the other, and on January 24, 1942, a consent judgment was entered in that court adjudicating that "as between those corporations" Rayon #2 was the owner of these customs refunds or the proceeds thereof. On or about January 30, 1942, a copy of that judgment was sent to the General Accounting Office accompanied by a written demand by Rayon #2 for payment of the proceeds of the checks aggregating $393,292.46, but the General Accounting Office still refused to approve the payment thereof.

Thereafter, on February 26, 1943, the attorneys for Rayon #1, Nyrayco, and Rayon #2 wrote to the Comptroller General of the United States as follows:

"Should it suit your purposes better, in the alternative the funds could, with the consent of N. Y. Rayon Importing Co., Inc. (#2) (hereinafter called 'Rayon #2'), now to be released to N. Y. Rayon Importing Co., Inc. (#1) (hereinafter called 'Rayon #1') and Nyrayco Importing & Converting Corporation (hereinafter

called 'Nyrayco'), each corporation being represented by its director or directors, as trustees in liquidation."

30 The Comptroller General nevertheless refused to allow payment of any claim based upon these judgments for customs, refunds, or the proceeds of the checks issued therefor, unless and until a final judgment by a court of competent jurisdiction concluded the question as to which of the claimants has a valid right to the amounts thereof, and he suggested that suit be brought in the Court of Claims. The date of the final refusal of the Comptroller General was March 25, 1943.

21. At the time of the dissolution of Rayon #1, its directors were Charles A. Springstead, one of the plaintiffs in Docket No. 45862, one Austin E. Kilkenny and one Max Spinnler. Austin E. Kilkenny died on July 20, 1932, and Max Spinnler died on April 1, 1935, so that from April 1, 1935, Charles A. Springstead was and is the sole surviving director of the directors in office at the time of the dissolution of Rayon #1.

22. Article II, Sections 2 and 9, of the By-Laws of Rayon #1, provides as follows:

"SECTION 2. Vacancies.—In case of any vacancy in the Board of Directors through death, resignation, disqualification or other cause, the remaining directors, although less than a quorum, by affirmative vote of a majority thereof may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant and until the election of his successor.

"SECTION 9. Quorum.—At least two (2) of the directors in office shall constitute a quorum for the transaction of business but if at any meeting of the Board there shall be less than a quorum present, the directors present may adjourn the meeting from time to time until a quorum is obtained."

23. At a meeting of the Board of Directors of Rayon #1, held on April 20, 1938, Charles A. Springstead, as the sole surviving director, elected Alfred L. Rose, one of the plaintiffs in Docket No. 45862, as a director of Rayon #1 to fill the vacancy caused by the death of Austin E. Kilkenny. Alfred L. Rose thereupon entered the meeting and took his place as a director, and, together with Charles A. Springstead, elected Norman S. Goetz, one of the plaintiffs in Docket No. 45862, as a director of Rayon #1 to fill the vacancy caused by the death of Max Spinnler.

31 To the knowledge of plaintiff, Alfred L. Rose, no other persons have been elected as directors of Rayon #1 since April 20, 1938, and no evidence has been presented that any other persons have been elected as directors of that corporation since that time. Plaintiffs Charles A. Springstead, Alfred L. Rose, and Norman S. Goetz since that date have continued to hold the

offices to which so elected. They are all residents of the State of New York and citizens of the United States, and in Docket No. 45862, Charles A. Springstead, Alfred L. Rose, and Norman S. Goetz sue in their representative capacities as the liquidating directors and trustees of Rayon #1.

24. At the time of the dissolution of Nyrayco, its directors were Max Spinnler, Martin Lowenberg, and Samuel W. Lowenberg. Martin Lowenberg resigned as a director on January 22, 1942, and Max Spinnler died, as heretofore shown, on April 1, 1935. From January 22, 1942, Samuel W. Lowenberg was and is the sole surviving director of the directors in office at the time of the dissolution of Nyrayco.

25. At a meeting of the Board of Directors of Nyrayco held on January 22, 1942, Samuel W. Lowenberg, as the sole surviving director, elected Alfred L. Rose as a director of Nyrayco to fill the vacancy caused by the death of Max Spinnler, and Norman S. Goetz as a director of Nyrayco to fill the vacancy caused by the resignation of Martin Lowenberg.

To the knowledge of plaintiff, Alfred L. Rose, no other persons have been elected as directors of Nyrayco since January 22, 1942, and no evidence has been presented that any other persons have been elected as directors of that corporation since that time. Samuel W. Lowenberg, Alfred L. Rose, and Norman S. Goetz since that date have continued to hold the offices to which so elected.

26. At the time of the dissolution of Rayon #2, its directors were Alfred L. Rose, one of the plaintiffs in Docket No. 45861, one Max Spinnler, and one Hartley Robbins; and there was one vacancy in the membership of the Board of Directors by reason of the death of Heinrich Keller, also known as Heinrich Keller-Gull. Heinrich Keller, also known as Heinrich Keller-Gull,
32 died on December 9, 1930; Max Spinnler died on April 1, 1935, and Hartley Robbins died on May 25, 1938; so that from May 25, 1938, Alfred L. Rose was and is the sole surviving director of the directors in office at the time of the dissolution of Rayon #2.

27. The provisions of Article II, Sections 2 and 9, of the By-Laws of Rayon #2, are the same as the provisions of Article II, Sections 2 and 9, of the By-Laws of Rayon #1, previously set forth in finding 22.

28. At a meeting of the Board of Directors of Rayon #2, held on June 10, 1938, Alfred L. Rose, as the sole surviving director, elected Norman S. Goetz, one of the plaintiffs in Docket No. 45861, as a director of Rayon #2 to fill the vacancy caused by the death of Max Spinnler. Norman S. Goetz thereupon entered the meeting and took his place as a director; and, together with Alfred L.

Rose, elected Walter Mendelsohn, one of the plaintiffs in Docket No. 45861, as a director of Rayon #2 to fill the vacancy caused by the death of Heinrich Keller, also known as Heinrich Keller-Gull. Walter Mendelsohn thereupon entered the meeting and took his place as a director; and, together with Alfred L. Rose and Norman S. Goetz, elected Bernard D. Lang, one of the plaintiffs in Docket No. 45861, as a director of Rayon #2 to fill the vacancy caused by the death of Hartley Robbins.

To the knowledge of plaintiff, Alfred L. Rose, no other persons have been elected as directors of Rayon #2 since June 10, 1938, and no evidence has been presented that any other persons have been elected as directors of that corporation since that time. Plaintiffs Alfred L. Rose, Norman S. Goetz, Walter Mendelsohn, and Bernard D. Lang since that date have continued to hold the offices to which so elected. They are all residents of the State of New York and citizens of the United States, and in Docket No. 45861 Alfred L. Rose, Norman S. Goetz, Walter Mendelsohn, and Bernard D. Lang sue in their representative capacities as the liquidating directors and trustees of Rayon #2.

29. The petitions in these suits were filed on April 29, 1943. On June 9, 1943, an order was entered consolidating these suits for the purpose of hearing and reporting by the Commissioner. Thereafter, on motion of the United States and pursuant to order of this court dated December 8, 1943, Societe was added as a party
33 plaintiff in each of these suits by the filing of amended petitions on January 21, 1944, so that it might be bound by the judgments of this court.

30. On motion of defendant, on November 25, 1944, and January 9, 1945, this court entered orders that (1) Cpl. Jean Pierre (John) Spinnler, Westover Field, Massachusetts; (2) Martin Lowenberg, 782 Pelham Parkway, South, Bronx, New York City; (3) Samuel W. Lowenberg, 305 Broadway, New York City, individually and as attorney in fact for Justine M. Spinnler and Cpl. Jean Pierre (John) Spinnler; and (4) Richard Shipping Corporation, 60 Beaver Street, New York City, appear before the Court within the time specified in those orders to assert and defend any possible interest each of them might have in these suits by filing an intervening petition conforming to the rules of this court, and that upon failure so to appear, any claims by these persons against defendant in respect to the subject matter of these suits should be forever barred. On December 4, 1944, the applicable order, together with a copy of the amended petitions in these cases, was personally served upon Martin Lowenberg, Samuel W. Lowenberg, and Richard Shipping Corporation by a Deputy United States Marshal. On December 8, 1944, the applicable order, together with a copy of the amended petitions in these cases, was

personally served upon Cpl. Jean Pierre (John) Spinnler by a Deputy United States Marshal. None of said persons has filed an intervening petition in these suits pursuant to these orders.

Conclusion of law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiffs, N. Y. Rayon Importing Co., Inc. (Rayon #2) and Alfred L. Rose, Norman S. Goetz, Walter Mendelsohn and Bernard D. Lang, as Liquidating Directors and Trustees, are entitled to recover $393,292.46, with interest at six percent from April 19, 1941; and that none of the other parties to either of the consolidated suits is entitled to recover.

It is therefore adjudged and ordered that plaintiffs N. Y. Rayon Importing Co., Inc. (Rayon #2) and Alfred L. Rose,
Norman S. Goetz, Walter Mendelsohn and Bernard D.
34 Lang, as Liquidating Directors and Trustees, recover of
and from the United States three hundred ninety-three thousand two hundred ninety-two dollars and forty-six cents ($393,292.46) with interest at six percent from April 19, 1941.

It is further adjudged and ordered that as to plaintiffs N. Y. Rayon Importing Co., Inc. (Rayon #1) and Alfred L. Rose, Norman S. Goetz and Charles A. Springstead, as Liquidating Directors and Trustees of N. Y. Rayon Importing Co., Inc. (Rayon #1), Nyraco Importing & Converting Corporation, impleaded plaintiff Societe Pour Nouveaux Placements de Capitaux, and as to Cpl. Jean Pierre (John) Spinnler, Martin Lowenberg, Samuel W. Lowenberg, individually and as attorney in fact for Justine M. Spinnler and Cpl. Jean Pierre (John) Spinnler and Richard Shipping Corporation, the petitions and all claims of interest in each of the consolidated suits be and the same are dismissed.

Opinion

JONES, Judge, delivered the opinion of the court:

These three suits are brought on two judgments rendered in 1937 by the United States Customs Court for the recovery of excessive duties paid by importers of rayon yarn. The duties were collected during the years 1925–1929. The calculations pursuant to judgments showed the excess collections totaled $393,292.46.

Three checks were drawn in payment of these judgments, but the General Accounting Office refused payment on the ground that the payee corporations had been dissolved. The proceeds of the checks were deposited in the Treasury in a trust fund entitled "Outstanding Liabilities 1938," pursuant to Section 725 (t), Title

31, of the United States Code, and were credited and still remain credited in that account to the following parties in the amounts hereinafter set forth:

N. Y. Rayon Importing Co. Inc. (which is Rayon #1)	$359,548.96
Richard Shipping Corporation	2,933.75
Nyraco Importing & Converting Corporation (which is Nyraco)	30,809.75

The defendant concedes the overpayment of duties but raises the question as to which of the plaintiffs is entitled to the money and whether interest should be paid on the amount of the judgments. Several incidental issues are involved.

The issues are somewhat confused by the dissolution and reorganization of corporations, stock transfers and board meetings, as well as the numerous parties to the various transactions. However, in going through the record, certain essential facts emerge that are helpful in our efforts to arrive at a correct conclusion.

The N. Y. Rayon Importing Co., Inc., called "Rayon #1," and Nyraco Importing and Converting Corporation, called "Nyraco," prior to March 1, 1930, protested customs duties on imported rayon yarns as excessive and illegal. All the protests were filed prior to March 4, 1930, by these two companies or by Richard Shipping Corporation, the customs house broker of Rayon #1. This is the prescribed method of instituting actions in the United States Customs Court.

On or about March 1, 1930, meetings of the Boards of Directors of Rayon #1, Nyraco and two other corporations called "Rayseta" and "Rayonese" unanimously adopted resolutions transfering all the assets and holdings of the four corporations to N. Y. Rayon Importing Co., Inc., called "Rayon #2," which was organized about that time for that purpose, which latter company agreed to assume the liabilities of the four corporations.

As a part of the reorganization Rayon #1 was dissolved as of March 1, 1930.

Rayon #2 was dissolved January 9, 1931.

Nyraco was dissolved December 16, 1935, because of delinquency in payment of taxes.

After the judgments by the United States Customs Court, dated April 30, 1937, and May 6, 1937, based on the protests of Rayon #1 and Nyraco, refunds were duly certified by the Collector of Customs to the proper disbursing officer for payment, $359,548.96 to Rayon #1, $2,933.75 to its customs house broker, Richard Shipping Corporation, and $30,809.75 to Nyraco.

After the General Accounting Office refused payment of the checks a petition was filed by Rayon #2 with that office requesting the transfer to it of the checks, which was refused.

In June 1940 an action was instituted in the Supreme Court of the State of New York for a declaratory judgment
36 to adjudicate the ownership of the customs refund claims as between Rayon #1 and Nyraco on the one hand and Rayon #2 on the other. On January 30, 1942, a consent judgment was entered in that court adjudicating that as between such companies Rayon #2 was the owner of the customs refunds or the proceeds thereof. The General Acounting Office still refused payment.

On February 26, 1943, attorneys for the three companies offered, in the alternative if the Comptroller General so desired, to have Rayon #2 release the funds to Rayon #1 and Nyraco, and for this purpose to have each of such corporations represented by the director or directors as trustees in liquidation. This effort proved fruitless.

The Comptroller General refused to allow payment of any claim based upon the judgment for customs, refunds, or the proceeds of the checks issued therefor, unless and until a court determined which of the various claimants had a right to the several amounts and suggested that suit be brought in the Court of Claims of the United States.

Accordingly these suits were filed.

The defendant impleaded other companies and individuals to defend any possible interest which they or any of them might have so that the question of ownership could be determined and all such parties bound. These will be discussed later in the opinion.

The details are set out in the findings and will not be repeated here.

In the circumstances we think there is no doubt of the right of the successor to Rayon #1 and its liquidating directors to recover $362,482.71. The defendant makes little contest of this item.

On the item of $30,809.75, the defendant contends that the judgment of the Customs Court was void because Nyraco, as a dissolved corporation, had no right to maintain the suit in the Customs Court.

The fact of the dissolution of Nyraco was never brought to the attention of the Customs Court during the pendency of the proceedings before it.

In 1932 section 29 of the General Corporation Law of New York was amended to include the following language:

"Upon the dissolution of a corporation for any cause and whether voluntary or involuntary its corporate ex-
37 istence shall continue for the purpose of * * * collecting and disbursing its assets * * * and it may sue and be sued in its corporate name."

At the time of the institution of the proceedings in the Customs Court another provision of the New York statute, Section 203–a of the New York Tax Law, was in effect. It provided for automatic dissolution of corporations listed by the Secretary of State as delinquent in the payment of taxes.

On April 9, 1931, subdivision 10 was added to Section 203–a, reading as follows:

"Notwithstanding any provision of this section, a corporation so dissolved pursuant hereto may thereafter in actions to foreclose tax liens be sued in its corporate name, adding thereto the words 'a corporation dissolved pursuant to section two hundred and three–a of the tax law of the state of New York' and personal service of the summons, complaint or other papers upon said dissolved corporation may be made by service of the same upon any person, who at the time of said dissolution was an officer, director, or trustee of said corporation, and a judgment obtained against said dissolved corporation shall be binding upon all of its property and assets to the same extent as if such corporation were not dissolved. Actions begun against any such corporation previous to its dissolution may thereafter proceed without change in the name of said corporation and the judgments when obtained shall be binding upon all of the property and assets of such dissolved corporation to the same extent as if such corporation had not been dissolved. Judgments heretofore obtained against any such corporation sued in its corporate name, shall be conclusive upon the legal representatives, stockholders, property and assets of said dissolved corporation to the same extent as if said corporation had not been dissolved anything to the contrary herein stated notwithstanding, unless an action to vacate the same shall have been commenced within six months after the passage of this act."

Defendant contends that this provision is inconsistent with the provision of Section 29 of the General Corporation Law, and that since Section 6 stipulates that in the event of inconsistency the provisions of the General Corporation Law shall not apply, Nyrayco had no right to maintain its suit in the Customs Court after its dissolution in 1935 for nonpayment of taxes.

38 The Supreme Court of New York in the case of Interstate Trucking Co. v. Manufacturers Trust Co., N. Y. L. J., May 2, 1935, 2260, held that Section 29 of the General Corporation Law applied to corporations dissolved under the tax law. The issues in the case arose prior to the enactment of subdivision 10, but the court in commenting used the following language:

"No provision to the contrary was to be found in Section 203–a of the Tax Law or elsewhere. Even if it be assumed that subdivision 10, after its enactment in 1931, applied to corporations which had previously been dissolved, there is nothing in that subdivision

to negative the right of the directors to maintain a suit in the corporate name. Subdivision 10 deals only with suits against the corporation. It is silent with respect to suits by the corporation. The right to sue should not be forfeited by implication."

To the same effect was the decision in Douglas v. Perlstein, 170 Misc. 561, 10 N. Y. Supp. (2d) 479.

In 1937 the Customs Court held contrary to the defendant's position on the exact question in Klytia Corp. v. United States, 72 T. D. 1124.

In 1939, however, the Appellate Division in Application of S. M. & J. Eisenstadt, Inc., 256 App. Div. 488, 10 N. Y. Supp. (2d) 868, held that corporations dissolved for nonpayment of taxes are legally dead and had no legal authority to sue.

The legislature in 1940 amended the law by specifically providing that Section 29 of the General Corporation Law should apply to corporations dissolved under the tax law (N. Y. Laws, 1940, C. 82). This amendment had been recommended by the Chief of the Division of Corporations on the ground that it was needed to clear up the uncertainty in the law.

There was still some disagreement as to whether the 1940 amendment applied to corporations previously dissolved. Then in 1941 the Legislature amended subdivision 10 of Section 203-a of the tax law, to include the following:

"The provisions of section twenty-nine of the general corporation law shall apply to any corporation heretofore or hereafter dissolved under this section."

This provision removed any doubt as to the right of any of the rayon corporations, or their liquidating directors, to maintain suits.

In the maze of reorganizations and transfers of assets and confusion we do not think it would be right or just to allow interest for the period prior to the enactment of the 1941 amendment. This amendment had the effect of removing any defects and uncertainty. It made clear the right of corporations dissolved under the tax law to maintain suits or be sued. By its terms it was made applicable to corporations theretofore dissolved. After April 19, 1941, the effective date of the amendment, there is no reason why Rayon #2, the owner of the two judgments, should not receive interest calculated from such date.

We can fully appreciate the desire of the General Accounting Office to protect the interests of the Government. This is as it should be. But the nation as well as the individual should be and usually is anxious to settle its just obligations. It has been known since 1937 that this money does not belong to the Government. In the confusion care was naturally exercised. But all the interested claimants seemed anxious to get the matter settled. Va-

rious offers were made which were rejected without any counter suggestion. These included offer of transfer or assignment and request for suggestions by liquidating directors and trustees. It was not until 1942 that suit in this court was suggested by the defendant.

It rather seems if officials of the General Accounting Office had been desirous of getting the matter disposed of they could have permitted transfers and assignments by all interested parties, or if this was not sufficient it could have suggested, at an earlier date, that an additional suit would be necessary. At any rate, four years seems a reasonably sufficient time to determine ownership of all parties. This is an added reason, at least persuasive, why the judgments of the Customs Court should bear interest after April 19, 1941, when all question of the capacity of plaintiffs to maintain suit was removed by the amendment to the New York law.

Societe Pour Nouveaux Placements de Capitaux, impleaded plaintiff in each of the consolidated suits, having filed disclaimer of interest, is not entitled to recover in either of them.

The following persons, Cpl. Jean Pierre (John) Spinnler, Martin Lowenberg, Samuel W. Lowenberg, individually and as attorney in fact for Justine M. Spinnler and Cpl. Jean Pierre (John) Spinnler and Richard Shipping Corporation, having been duly cited, by order of the court on motion of the defendant, to appear before the court within the time specified in the orders to assert and defend any possible interest any of them might have in these suits by filing intervening petitions, and each of them having failed to assert any claim or file any intervening petition, neither of them is entitled to recover and each of them is forever barred from asserting any claim in such suits, the subject matter or the proceeds thereof.

N. Y. Rayon Importing Co., Inc. (Rayon #2) and Alfred L. Rose, Norman S. Goetz, Walter Mendelsohn, and Bernard D. Lang, as its Liquidating Directors and Trustees, by authorized transfer, assignment and succession, are the present owners of the two judgments, proceeds, subject matter and checks, entered and issued as heretofore described, and as such are entitled to recover from the defendant the sum of $393,292.46, together with interest from April 19, 1941, at the rate of six percent per annum, being the proceeds in the three consolidated suits.

By reason of the transfer, assignment and succession above referred to, the plaintiffs in suit No. 43862, N. Y. Rayon Importing Co. Inc. (#1) and Alfred L. Rose, Norman S. Goetz, and Charles A. Springstead, as Liquidating Directors and Trustees of N. Y. Rayon Importing Co. Inc. (#1), and in suit No.

41 45863 Nyrayco Importing & Converting Corporation, are not entitled to recover, their rights having been succeeded to by the plaintiffs named in the preceding paragraph.

It is so ordered.

WHITAKER, Judge; LITTLETON, Judge; and WHALEY, Chief Justice; concur.

MADDEN, Judge, took no part in the decision of this case.

43 *Judgment of the Court*

At a Court of Claims held in the City of Washington on the 4th day of February A. D., 1946, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiffs, N. Y. Rayon Importing Co., Inc. (Rayon #2) and Alfred L. Rose, Norman S. Goetz, Walter Mendelsohn and Bernard D. Lang, as Liquidating Directors and Trustees are entitled to recover $393,292.46 with interest at six percent from April 19, 1941.

It is therefore adjudged and ordered, that plaintiffs, N. Y. Rayon Importing Co., Inc. (Rayon #2) and Alfred L. Rose, Norman S. Goetz, Walter Mendelsohn and Bernard D. Lang, as Liquidating Directors and Trustees, recover of and from the United States three hundred ninety-three thousand two hundred ninety-two dollars and forty-six cents ($393,292.46) with interest at six per-

45 cent from April 19, 1941.

If is further adjudged and ordered, that as to impleaded plaintiff, Societe Pour Nouveaux Placements de Capitaux, and as to Cpl Jean Pierre (John) Spinnler, Martin Lowenberg, Samuel W. Lowenberg, individually and as attorney in fact for Justine M. Spinnler and Cpl Jean Pierre (John) Spinnler and Richard Shipping Corporation, the petitions and all claims of interest in each be and the same are dismissed.

47 [Clerk's certificate to foregoing transcript omitted in printing.]

(Endorsement on cover:) File No. 50,884, 50,888. Court of Claims. Term No. 1181. The United States, Petitioner, vs. N. Y. Rayon Importing Co., Inc. (#2) and Alfred L. Rose, Norman S. Goetz, et al. Enter Wilbur H. Friedman. Term No. 1185. N. Y. Rayon Importing Co., Inc. (#2) and Alfred L. Rose, Norman S. Goetz, et al., Petitioners vs. The United States. Petitions for writs of certiorari and exhibit thereto. Filed April 30, 1946, May 1, 1946. Term No. 1181 O. T. 1945, 1185 O. T. 1945.

Supreme Court of the United States

No. 94—October Term, 1946

Order allowing certiorari

Filed October 14, 1946

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is transferred to the summary docket and assigned for argument immediately following No. 106, United States vs. Thayer-West Point Hotel Co.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 96—October Term, 1946

Order allowing certiorari

Filed October 14, 1946

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is transferred to the summary docket and assigned for argument immediately following Nos. 106 and 94.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1946